



**REPUBLIC OF KENYA**  
**IN THE HIGH COURT OF KENYA**  
**AT NAIROBI (NAIROBI LAW COURTS)**

**Civil Case 549 of 2006**

**KIDS ALIVE KENYA REGISTERED TRUSTEES.....APPLICANT**

**VERSUS**

**DR.KENDY BOVARD AND**

**REV.JOHN BOVARD.....RESPONDENT**

**RULING**

A perusal of the record reveals presence of a plaint dated 24<sup>th</sup> May 2006 and filed on 25<sup>th</sup> may 2006. The Plaintiffs therein are Kids Alive Kenya Registered Trustees suing as Trustees of Kids Alive Kenya Trust as plaintiffs. The defendants to the action are named as Dr. Wendy Bovard and Rv. John Bovard. The Plaint was accompanied by an interim application dated the same date and filed the same date as the plaint. It is yet to be disposed off inter parties.

There is unheaded application dated 6<sup>th</sup> June 2006 and filed the same date. Though the provisions under which the application is to be brought are stated, it is not stated whether it is by way of Chamber Summons or Notice of Motion. That application is also still pending on record.

There is a notice to withdraw filed by one Rev. Stephen Masila dated 8<sup>th</sup> day of June 2006y filed the same date. The contents of the notice are the Kids Alive Kenya has wholly withdrawn the above suit on the same date on the same date here is a notice to Act in person. In both documents Rev. Stephen Masila described himself as chairman Trustees Kids Alive Kenya Trust.

There is also an application dated 14<sup>th</sup> June 2006 and filed the same date. It is brought under order L rule 1 Civil Procedure Rules and Section 3A of the Civil Procedure Act seeking orders that the notice of intention to act in person and notice to withdraw suit filed by Reverend Stephen Masila dated 8<sup>th</sup> June and filed on the same date be struck out of the court record, that the court be at liberty to make such further orders that it deems just and appropriate to meet ends of justice and that the said Reverend Stephen Masila do pay costs of this application.

There is also an amended plaint dated 26<sup>th</sup> June 2006 and filed on 27<sup>th</sup> June 2006.

The 1<sup>st</sup> and 2<sup>nd</sup> Respondents have filed a notice of preliminary objection dated 30<sup>th</sup> day of June 2006 and filed the same date. The notice lists 4 grounds of objection. These are:-

1. That the application has been made by a person who lacks capacity
2. The application is bad in law having been made in a withdrawn suit
3. That there is pending an application by the applicant to determine the status of the suit.
4. That the application be dismissed with costs for being an abuse of the process of the Court.

The preliminary objection was argued on 19.4.2007. From the face of the preliminary objection it is not

indicated against what the preliminary objection is being raised. Ground 1 does not name the application made by the person who lacks capacity. The person who lacks capacity has not been named. Ground 2 does not name the application which is bad in law. Neither does it state which suit has been withdrawn or when the suit was withdrawn. In ground 3 the pending application is not named and in ground 4 the application to be dismissed is not identified.

The particulars required in ground 1,2, 3 and 4 would have been unnecessary had the applicant stated at the heading or immediately below the heading the application which was being objected to. In view of this ambiguity there is no need to go into the merits of the argument presented as that will be an exercise in futility. This escaped the scrutiny of the court at the time the Preliminary Objection was heard inter parties.

The court notes that the accompanying grounds of objection names the application objected to and the applicant whose action is objected to. But these grounds perfect as they may be are a distinct process distinct from the Preliminary objections and there is no way this court can incorporate them into this Preliminary objection process to provide a cure for the ambiguity pointed out. This being the case this court has no alternative but to strike out the preliminary objection notice as being incompetent. This is a lesson to all the stakeholders that in future before any argument is commenced on any process care should be taken to ensure that the particular process is ready for argument before commencing the argument. This will go along way to save a lot of judicial time for the benefit of all the stakeholders.

The striking out of the preliminary notice will not prejudice the objectors as those points can comfortably be incorporated into the grounds of opposition already on record.

The Plaintiff who was the Respondent to the Preliminary Objection will have costs of the application.

DATED, READ DELIVERED AT NAIROBI THIS 18<sup>TH</sup> DAY OF MAY 2007.

R. NAMBUYE

JUDGE